

HEIRS OF NEHEMIAH STOKELY.

[To accompany Bill H. R. No. 257.]

MARCH 2, 1860.

Mr. FERRY, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Nehemiah Stokely, a revolutionary officer, report:

That this claim was favorably reported on the 26th March, 1858; that report, with the evidence, has been re-examined, and your committee, concurring entirely with that report, adopt it, and report a bill in all respects the same as the one then reported.

IN THE HOUSE OF REPRESENTATIVES, *March 26, 1858.*

Mr. DAWES, from the Committee on Revolutionary Claims, made the following report.

The Committee on Revolutionary Claims, to whom was referred the adverse report of the Court of Claims in the case of Joseph Stokely and others, (the children of Nehemiah Stokely, a revolutionary officer,) with instructions to report on the merits, having had the same under consideration, report:

That originally this claim was presented to the House, and referred to the Committee on Revolutionary Claims, who reported favorably thereon; and during its pendency in the House, it was referred by a general resolution to the Court of Claims, on the organization of that court; that thereupon the claimants filed their petition in said court, and the said court ordered testimony to be taken, which was taken and filed in said court, and an issue formed; that briefs were exchanged between the counsel for the claimants and the government, and the case set down for trial on the trial docket, and in due time reached in its order on the calendar of the court, and submitted for the adjudication of the court on the facts and the law. The report of the Court of Claims is in the nature of a special verdict, finding for the United States on the law (*of limitations.*)

There have been three successive reports from committees of the House, in each of which the merits of the claim have been favorably considered, and bills have been reported. In the Court of Claims it has undergone a thorough investigation and trial, and there is no other reason assigned by the court against the allowance of this claim for half-pay for life, under the resolves of Congress named, than the acts of limitation before mentioned. In a similar case, where the limitation did not apply by reason of its having been presented within the time limited, though rejected, the court has sustained the *contract* character of the resolves of Congress of this description; and Congress has deliberately endorsed the decision in that case, and the amount has been paid at the Treasury.—(See Thomas H. Baird *vs.* The United States; Devereux's Reports U. S. Court of Claims, page 188 to 195.)

Your committee have refrained from expressing their views in regard to the acts of limitation, as not coming within their instruction.

On the question of the merit, it satisfactorily appears that in the year 1776, Nehemiah Stokely entered the service of the United States as a captain, and served in the 8th regiment of the Pennsylvania line, in the continental army, commanded by Colonel Broadhead; that he served in said regiment from the year 1776 till the year 1779. The period of his service and his rank in the service are proved by the depositions of several witnesses who served with him in the same regiment, as also from the certificate of Peter Hagner, esq., Third Auditor of the Treasury, of date March 11, 1848, and that the said Stokely in 1779 became a "deranged" or supernumerary officer. Those officers who were "deranged" at various periods during the war of the revolution, although not in actual service, were still liable to be called into service at any time the government should require it. They continued to hold their commissions till the end of the war. That Captain Stokely was so considered, appears from the fact that he drew from the United States the bounty according to his grade in the service. In addition to these facts, it appears from the certificate of the auditor general of Pennsylvania that Captain Stokely was, during the whole or a great part of the time from 1779 to the close of the war, actually in service, having enlisted companies for the protection of the western frontier; and although no evidence of the service appears from the records in the office of the Third Auditor, yet it is established by evidence of as high a value, and as well entitled to credit. From a full consideration of all the facts, the committee are of opinion that Captain Stokely was entitled to the same bounty which the government has so liberally bestowed on those who served with him in the same great struggle. He having become a "deranged" officer in April, 1779, as such he did not become entitled to "commutation." And the committee, therefore, report a bill for the half-pay for life—his death occurring in May, 1792.